

# **TAB 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

HENRY ESPEJO, individually and on behalf of  
all others similarly situated,

*Plaintiff,*

*v.*

SANTANDER CONSUMER USA, INC., an  
Illinois corporation,

*Defendant.*

ARICA BONNER, *et al.*, on behalf of  
themselves and all others similarly situated,

*Plaintiffs,*

*v.*

SANTANDER CONSUMER USA, INC.,

*Defendant.*

Case No.: 1:11-cv-08987

Honorable Charles P. Kocoras

Case No.: 12-cv-09431

Honorable Charles P. Kocoras

**DECLARATION OF WAYNE NIGHTENGALE  
IN SUPPORT OF SANTANDER CONSUMER USA, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

I, Wayne Nightengale, declare under oath as follows:

1. I am currently employed by Santander Consumer USA, Inc. ("Santander") as Executive Vice President of Servicing and have held that position since November 2014. Prior to that time, I was employed by Santander as Assistant Vice President of Servicing from July 2005 until 2008, as Vice President of Servicing from 2008 to 2010, and as Senior Vice President of Servicing from 2010 until November 2014. I have personal knowledge of the facts stated in this Declaration and I could and would competently testify to them in a court of law.

2. In my roles as Assistant Vice President, Vice President, Senior Vice President and Executive Vice President of Servicing for Santander, my primary responsibilities have included all aspects of customer interaction from customer service through collection activity. In that capacity, I have access to Santander's business records, including the Activity Notes used by Santander's agents and the financing documents for customer's automobile loan transactions. The business records referred to in this Declaration were made and kept in the ordinary course of Santander's business and were prepared in the normal course of business at or near the time of the events to which they refer or relate.

#### **Activity Notes**

3. Santander maintains customer information on the "My Supervisor" or "My Sup" host system – a graphic interface that sits on top of a commercially available customer account management system.

4. Anytime the company attempts to dial a customer-related telephone number, receives a customer call, or otherwise communicates with a customer, it documents that contact at the account level in My Sup. The information collected includes: the date and time of the call; whether the call is inbound to, or outbound from, Santander; if outbound, the calling mode used (e.g., manual or dialer) and how the call was handled (e.g., by an agent, dialer, the system or some other person); and if answered, how the Santander agent "dispositioned" the call (i.e., events that occurred on the phone call such as the customer service provided, customer payment promised or message left). The Activity Notes also allow agents to make free form notes.

5. Santander's telephone system identifies the number from which its customers or other persons related to customer accounts call Santander. The company trains its agents to confirm in each in-bound call related to a customer account whether the number on which the

person is calling is a good number to contact him or her regarding the customer account. Additionally, Santander employs software that prompts agents to verify contact information, again confirming the telephone numbers are good numbers on which to contact the person associated with the telephone number.

6. Santander's policies also require agents to record "do not call" requests made by those with whom they are speaking. Santander takes customer requests to end telephone communications seriously. The company trains agents to identify this material information in the Activity Notes via a drop down button that inserts the "do not call" request in the notes. Once recorded, the My Sup software disables the number such that neither agents nor the dialer can contact that number.

7. Santander personnel refer to the customer-related information recorded for each account in My Sup as the "Activity Notes" for the customer account. In the normal course of Santander's business, personnel with a duty to accurately record information regarding customer accounts electronically access the Activity Notes and contemporaneously update these records with customer-related information when generated or received. Additionally, Santander employs computer hardware and software that automatically updates the Activity Notes with phone numbers and call dates and times when a customer-related call is made to, or received by, Santander through its Aspect Telephone System. Santander relies on the information contained in these Activity Notes during the normal course of its daily business activity.

8. Santander employed the Aspect Telephone System when making outbound calls to, or receiving inbound calls from, telephone numbers related to the Maria Espejo and Levins accounts (*i.e.* to telephone numbers ended 1411, 6954, 9678 and 6074).

**Henry and Maria Espejo**

9. Attached as Exhibit A, is a true and correct copy of a credit application Maria Espejo submitted to obtain financing from Sovereign Bank for a Toyota Corolla she purchased from Kendall Toyota in Miami, Florida. Santander, a specialized consumer finance company, acted as the third-party servicer on this loan.

10. Attached as Exhibit B hereto, is a printout from the Activity Notes related to Maria Espejo's account. The six columns in this Activity Notes printout can generally be explained as follows:

- a. The first column contains the date each particular entry was dispositioned;
- b. The second column contains the time each particular entry was dispositioned.
- c. The third column contains a disposition code consisting of four letters. Each disposition code has an independent meaning within Santander's records, and is not limited to phone communications with the customer.
- d. The fourth column indicates whether the call or other activity was ultimately "handled by" the dialer, an agent, the My Supervisor computer system, or some other person or system.
- e. The fifth column contains a four-digit letter code that indicates who performed the function. Sometimes this can be a particular agent's identification code; other times it refers to a system related abbreviation.
- f. The sixth column is the notes field in which agents can type a "free form" message using their own unique words or choose from certain drop-down menus or categories. This field also sometimes contains system generated notes depending on the purpose of each particular entry.

11. The "handled by" column in Santander's Activity Notes, which uses terms such as "Agent" and "Dialer," does not necessarily indicate the dialing method that Santander used to initiate a phone call. The reader of the Activity Notes must also consult the notes field to see what type of calls were made (*i.e.*, those initiated by a dialer versus manually dialed by an agent).

12. The Activity Notes for the Maria Espejo Account record that on June 26, 2009, Mrs. Espejo contacted Santander on a telephone number ending in 1411 to indicate that she would keep an earlier promise to make a payment by that date.

13. The Activity Notes for the Maria Espejo Account record that on September 9, 2009, Mrs. Espejo called Santander using the 1411 telephone number to ask for additional time to make the next payment as a result of her need to pay medical expenses. The notes further reflect that during this call, Mrs. Espejo identified the 1411 telephone number as her "home" number. When an agent records a telephone number in the Activity Notes as a "home" number, it signifies that the customer has identified the telephone number as her home phone number and the agent has verified the number as an appropriate number on which to contact her regarding her loan.

14. The Activity Notes for the Maria Espejo Account record that Mrs. Espejo used the 1411 telephone number to contact Santander on October 27, 2009, when she indicated that a family emergency caused her to not make a timely loan payment.

15. The Activity Notes for the Maria Espejo Account record that on November 4, 2009, Mr. and Mrs. Espejo together made a call to Santander using the 1411 telephone number to explain that Mr. Espejo's bank had not yet made a payment that Mrs. Espejo had said Mr. Espejo would make on her behalf. The notes further reflect that during that call, Mrs. Espejo agreed that Santander could talk to Mr. Espejo about her debt.

16. The Activity Notes for the Maria Espejo Account record that on November 4, 2009, Santander updated its records to record the 1411 telephone number as a cell number. Under Santander's procedures, the agent recording that information would have confirmed with

Mr. Espejo that the 1411 cell phone number was a good number on which to contact Mr. Espejo regarding his wife's debt.

17. The Activity Notes for the Maria Espejo Account record that at no point prior to the call with Mr. and Mrs. Espejo on November 4, 2009, did Santander make an outbound call to the 1411 telephone number.

18. The Activity Notes for the Maria Espejo Account reflect that Mr. Espejo answered a call to the 1411 telephone number 4 times (on November 12, 2009, March 8, 2010, August 30, 2010 and December 6, 2010), with the remaining calls either not reaching the number, receiving a busy signal or connecting to an answering machine.

19. The Activity Notes for the Maria Espejo Account record that with regard to the four calls answered by Mr. Espejo, the following occurred:

- On November 12, 2009, Mr. Espejo said Maria Espejo could not pay until November 21 because of a large medical bill;
- On March 8, 2010, Mr. Espejo said he had mailed a payment for Maria Espejo's account of unknown amount;
- On August 30, 2010, Mr. Espejo promised to make a payment for Maria Espejo's account the next day; and
- On December 6, 2010, Mr. Espejo said Maria Espejo had not made a payment because of car repairs and would have Maria Espejo call Santander to seek a deferment.

All other conversations with Mr. Espejo (both before and after these four calls) took place on inbound calls to Santander where he sought accommodations for his wife.

20. The Activity Notes for the Maria Espejo Account do not record any request from Mr. Espejo to stop calling the 1411 telephone number in the November 12, 2009, March 8, 2010, August 30, 2010 and December 6, 2010 calls.

21. The Activity Notes for the Maria Espejo Account record that Mr. Espejo or his wife used the 1411 telephone number to call Santander 25 times, with Mr. Espejo speaking on behalf of his wife in 23 of those calls, to discuss payment accommodations for Mrs. Espejo's debt. The records do not reflect Mr. Espejo asking Santander to stop calling the 1411 telephone number.

**Faye Levins**

22. Attached as Exhibit C hereto, is a printout from the Activity Notes related to Faye Levins' account. The six columns in this Activity Notes printout can generally be explained in the same way as the notes in the Maria Espejo Activity Notes printout.

23. The Activity Notes for the Faye Levins Account record that Santander contacted Levins at three cell phone numbers ending in 6954, 9678 and 6074.

24. Attached as Exhibit D hereto, is a true and correct copy of a January 31, 2009 credit application completed by Faye Levins. Santander is the successor in interest by merger to the lender, Drive Financial Services, LP. This credit application identifies Levins' 6954-ended telephone number as her "home" and "cell" phone number.

25. The credit application states:

By providing my cell phone number, I give my prior express consent to receive calls and text messages from the creditor or its third party debt collector at that number, including calls and messages made by using an autodialer or prerecorded message.

26. Attached as Exhibit E is a disk that contains a true and accurate copy of a recording made of a May 14, 2012 call to the telephone number ending in 9678. This recording was made and kept in the ordinary course of Santander's business and it is Santander's regular business practice to maintain such call recordings. On this recording, a person who identifies

herself as Faye Levins confirms that the 9678 telephone number is a current cell phone number that Santander could use to contact her.

27. The Activity Notes for the Faye Levins Account record that before May 14, 2012, Santander had made three manually dialed calls to the 9678 telephone number, on May 4, 7 and 10, 2012. Those notes do not record Santander using the dialer feature of the Aspect Telephone System to call the 9678 telephone number prior to May 14, 2012.

28. The Activity Notes for the Faye Levins Account indicate that Levins submitted a number of MoneyGram and Western Union payments to Santander between May 2010 to January 2011, which identified the 6074 telephone number as a contact number for Levins. These MoneyGram and Western Union payments are reflected by the codes "MGUP" and "WUUP" in the Activity Notes.

29. The Activity Notes for the Faye Levins Account record that a Santander agent identified Levins' 6074 number as "IVR1 Home." The Activity Notes do not record Santander using the dialer feature of the Aspect Telephone System to call the 6074 telephone number prior to the identification of this number as "IVR1 Home."

30. The Activity Notes for the Faye Levins Account do not record any request from Levins to stop calling the cell phone numbers ending in 6954, 9678 and 6074.

FURTHER DECLARANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 21<sup>st</sup> day of April 2016 in Dallas, Texas.



Wayne Nightengale

## **TAB 2**

### **EXHIBIT A TO THE DECLARATION OF WAYNE NIGHTENGALE**

DEALER NAME  
**KENDALL TOYOTA**

DEALER TELEPHONE NUMBER  
**305 - 665 - 6581**

DEALER FAX NUMBER  
**305 - 669 - 7381**

### APPLICANT'S CREDIT STATEMENT

Individual Credit       Check  
 Joint Credit      Appropriate Box  
 Community Property State  
 Business Application

If you are applying for individual credit in your name and relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Section A.  
 If you are applying for joint credit with another person, complete sections A and B.  
We intend to apply for joint credit

Applicant

Co-Applicant

If you are married and live in a community property state, please complete Section A about yourself and Section B about your spouse. You must sign this application. Your spouse must sign this application only if s/he wishes to be a Co-Applicant.

#### A. Applicant's Personal Credit Information

**MARIA**      **C**    **ESPEJO**  
FIRST NAME OR BUSINESS NAME      MI      LAST NAME

EMAIL ADDRESS	DRIVER'S LICENSE #	DRIVER'S LICENSE STATE	
DATE OF BIRTH (MM/DD/YYYY)	0537	2 YRS 6 MOS	
HOME PHONE #	OTHER PHONE #	TIME AT ADDRESS	
		PO BOX #	
		RURAL ROUTE	
CITY	STATE	ZIP CODE	
MIG FIRM OR RENT			
PREVIOUS STREET # AND NAME	APT/SUITE #	PO BOX #	RURAL ROUTE
CITY	STATE	ZIP CODE	YRS    MOS
<b>J C PENNY</b>	<b>Employed</b>	<b>SALES DEP</b>	TIME AT ADDRESS
EMPLOYMENT STATUS      OCCUPATION			
BUSINESS PHONE #	2 YRS 3 MOS	TIME EMPLOYED	SALARY TYPE
1786			

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

OTHER INCOME	SOURCE OF OTHER INCOME		
PREVIOUS EMPLOYMENT (if less than 2 yrs at current)	EMPLOYMENT STATUS	BUSINESS PHONE #	YRS    MOS
BANK NAME	CHECKING/SAVINGS ACCOUNT (BANK ACCOUNT #)		
CONTACT NAME AT BANK (IF BUSINESS APPLICATION) NEAREST RELATIVE OR FRIEND NOT LIVING WITH YOU	CONTACT PHONE #	OCCUPATION	
NAME	ADDRESS	PHONE	

**SCUSA/E 0004  
CONFIDENTIAL**

**FOR DEALER USE ONLY**

A/C       Cruise       Man. Trans.       Sunroof       Ste/Bo       Pwr. Windows  
 Pwr. Seats       4WD       T-Top       Alum./Wire Wheel       Leather Seats       Pwr. Door Locks

## VEHICLE OPTIONS

KENDALL TOYOTA	134664	Used	Retail	75	12323P
DEALER NAME	DEALER #	VEHICLE TYPE	PRODUCT TYPE	TERM	STOCK#
2T1BR32E67C771961	2007 toyota	corolla	cs 4d sedan		
VIN #	YEAR MAKE	MODEL DESCRIPTION	TRIM		

<b>Black Book</b>		<input type="checkbox"/> CERTIFIED PREOWNED				
VEHICLE SOURCE						
<b>15659</b>	<b>989</b>	<b>1</b>	<b>2695</b>			<b>13954</b>
CASH SELLING PRICE	SALES TAX	T&L	CASH DOWN	FRONT-END FEES	REBATE	NET TRADE
						GROSS CAP/ UNPAID BALANCE
ACCIDENT/HEALTH INS	CREDIT LIFE	GAP	WARRANTY	BACK-END FEES		
<b>14235</b>		<b>Black Book</b>				
MSRP	INVOICE/WHOLESALE VALUE		WHOLESALE SOURCE	RETAIL VALUE		RETAIL SOURCE
<b>4119</b>	<b>267</b>					
MILEAGE	EST PAYMENT	APR				
<input checked="" type="checkbox"/> VEHICLE BOOKOUT <b>06/26/2007</b>			VEHICLE BOOKOUT DATE	EST AMT FINANCED		

#### VEHICLE BOOKOUT OPTIONS

AUTO TRANS

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**LENDER PROGRAM**

## TRADE IN

YEAR	MAKE	MODEL DESCRIPTION	TRIM
TRADE FINANCED BY		TRADE MONTHLY PYMT	

SCUSA/E 0005  
CONFIDENTIAL

## **TAB 3**

### **EXHIBIT B TO THE DECLARATION OF WAYNE NIGHTENGALE**

**FILED UNDER SEAL**

**Pursuant to the Stipulated  
Protective Order filed  
October 22, 2014**

## **TAB 4**

### **EXHIBIT C TO THE DECLARATION OF WAYNE NIGHTENGALE**

**FILED UNDER SEAL**

**Pursuant to the Stipulated  
Protective Order filed  
October 22, 2014**

## **TAB 5**

### **EXHIBIT D TO THE DECLARATION OF WAYNE NIGHTENGALE**

## AGREEMENT

The words "you", "your", and "yours" mean each person submitting this application. The words "we", "us", "our" and "ours" as used below refer to us, the dealer, and to the financial institution(s) selected to receive your application.

You authorize us to submit this application and any other application submitted in connection with the proposed transaction to the financial institutions disclosed to you by us the dealers. This application will be reviewed by such financial institutions on behalf of themselves and us the dealer. In addition, in accordance with the Fair Credit Reporting Act, you authorize that such financial institutions may submit your applications to other financial institutions.

You agree that we may obtain a consumer credit report periodically from one or more consumer reporting agencies (credit bureaus) in connection with the proposed transaction and any update, renewal, refinancing, modification or extension of that transaction. You also agree that we or any affiliate of ours may obtain one or more consumer credit reports on you at any time whatsoever. If you ask, you will be told whether a credit report was requested, and if so, the name and address of any credit bureau from which we or our affiliate obtained your credit report.

You agree that we may verify your employment, pay, assets and debts, and that anyone receiving a copy of this is authorized to provide us with such information. You further authorize us to gather whatever credit and employment history we consider necessary and appropriate in evaluating this application and any other applications submitted in connection with the proposed transaction.

We may keep this application and any other application submitted to us and information about you whether or not the application is approved. You certify that the information on the application and in any other application submitted to us, is true and complete. You understand that false statements may subject you to criminal penalties.

## FEDERAL NOTICES

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

## STATE NOTICES

**California Residents:** An applicant, if married, may apply for a separate account.

**Ohio Residents:** Ohio laws against discrimination require that all creditors make credit equally available to all creditworthy customers and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

**New Hampshire Residents:** If this is an application for balloon financing, you are entitled to receive, upon request, a written estimate of the monthly payment amount that would be required to refinance the balloon payment at the time such payment is due based on the creditor's current refinancing programs.

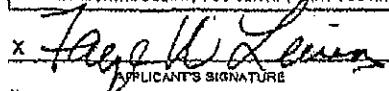
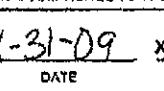
**New York Residents:** In connection with your application for credit, we may request a consumer report which contains information on your creditworthiness, credit standing, personal characteristics and general reputation. If we grant you credit, we or our loan servicer may order additional consumer reports in connection with any update, renewal or extension of the credit. If you ask us, we will tell you whether we obtained a consumer report and if we did, we will tell you the name and address of the consumer reporting agency that gave us the report.

**Vermont Residents:** By signing below you authorize us and our employees or agents to obtain and verify information about you (including one or more credit reports, information about your employment and banking and credit relationships) that we may deem necessary or appropriate in evaluating your loan application. If your application is approved and the loan is made, you also authorize us, and our employees and agents, to obtain additional credit reports and other information about you in connection with renewing the account, increasing the available credit on the account (if applicable), taking collection on the account, or for any other legitimate purpose.

**Married Wisconsin Residents:** Wisconsin law provides that no provision of any marital property agreement, or unilateral statement, or court order applied to marital property will adversely affect a creditor's interest. Unless, prior to the time that the credit is granted, the creditor is furnished with a copy of the agreement, statement or decree, or has actual knowledge of the adverse provision. If you are making this application individually, and not jointly with your spouse, the full name and current address of your spouse must be properly disclosed in the co-applicant section of this application.

This application may be submitted to the following financial institutions (Name(s) and Address(es))

BY SIGNING BELOW, YOU CERTIFY THAT YOU HAVE READ AND AGREE TO THE TERMS AND DISCLOSURES ON THE THREE PAGES OF THIS APPLICATION.

 (31-09)  X

APPLICANT'S SIGNATURE	DATE	CO-APPLICANT'S SIGNATURE	DATE
-----------------------	------	--------------------------	------

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Printed on 01/31/2009 at 05:17 PM

DEFENDANT'S  
EXHIBIT

SCUSA/B 00053  
CONFIDENTIAL

DEALER NAME  
ADAMSON FORD

DEALER TELEPHONE NUMBER  
205 - 271 - 4855

DEALER FAX NUMBER  
205 - 271 - 4850

**APPLICANT'S CREDIT STATEMENT**

Individual Credit       Joint Credit  
 Community Property State       Business Application

Check  
Appropriate  
Box

If you are applying for individual credit in your name and relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Section A.  
 If you are applying for joint credit with another person, complete sections A and B.  
We intend to apply for joint credit.

Applicant

Co-Applicant

If you are married and live in a community property state, please complete Section A about yourself and Section B about your spouse. You must sign this application. Your spouse must sign this application only if s/he wishes to be a Co-Applicant.

**A. Applicant's Personal Credit Information**

SOCIAL SECURITY NUMBER or (TAX ID) FAYE FIRST NAME OR BUSINESS NAME M LAST NAME LEVINS

EMAIL ADDRESS  DRIVER'S LICENSE # 6954 DRIVER'S LICENSE STATE

DATE OF BIRTH (MM/DD/YYYY) 09/01/1964 HOME PHONE #  CELL PHONE # (See below) 6954 YRS 14 MOS  Homeowner  
TIME AT ADDRESS

CURRENT STREET# AND NAME  APT/SUITE #  PO BOX #  RURAL ROUTE

CITY  STATE  ZIP CODE  MTG PYMT OR RENT

PREVIOUS STREET# AND NAME  APT/SUITE #  PO BOX #  RURAL ROUTE

CITY  STATE  ZIP CODE  YRS  MOS   
TIME AT ADDRESS

TMOBILE Employed SALES  
EMPLOYED BY or TYPE OF BUSINESS (If business application)  EMPLOYMENT STATUS  OCCUPATION

BUSINESS PHONE #  YRS 8 MOS  SALARY  SALARY TYPE   
TIME EMPLOYED

CITEL Employed 15 YRS 10 MOS  
PREVIOUS EMPLOYMENT (If less than 2 yrs at current)  EMPLOYMENT STATUS  BUSINESS PHONE #  TIME EMPLOYED

WORKER  
OCCUPATION

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

OTHER INCOME  SOURCE OF OTHER INCOME

By providing my cell phone number, I give my prior express consent to receive calls and text messages from the creditor or its third party debt collector at that number, including calls and messages made by using an autodialer or prerecorded message.

Printed on 01/31/2009 at 05:17 PM

SCUSA/B 00054  
CONFIDENTIAL

# **TAB 6**

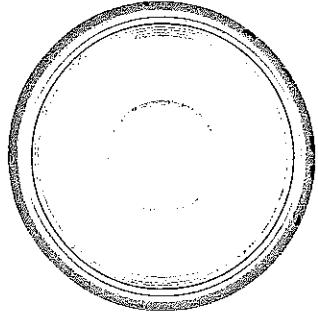
## **EXHIBIT E TO THE DECLARATION OF WAYNE NIGHTENGALE**

### **FILED UNDER SEAL**

**Pursuant to the Stipulated  
Protective Order filed  
October 22, 2014**

# ReedSmith

The business of relationships.<sup>SM</sup>



Bonner v. Santander Consumer USA, Inc.  
Case No. 1:12-cv-09431

SCUSA-B 00076

May 14, 2012

CONFIDENTIAL

# **TAB 7**

July 21, 2015

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF ILLINOIS  
3                   EASTERN DIVISION

4                   HENRY ESPEJO, individually  
5                   and on behalf of all others  
6                   similarly situated,

7                   Case No.: 1:11-cv-08987

8                   Plaintiff,

9                   Honorable Charles P. Kocoras

v.

10                  SANTANDER CONSUMER USA, INC.,  
11                  an Illinois corporation,

12                  Defendant.

13                  ARICA BONNER, et al,  
14                  individually and on behalf  
15                  of all others similarly  
16                  situated,

17                  Case No.: 1:12-cv-9431

18                  Plaintiff,

19                  Honorable Charles P. Kocoras

v.

20                  SANTANDER CONSUMER USA, INC.,  
21                  an Illinois corporation,

22                  Defendant.

23                  \*\*\*\*\*

24                  ORAL DEPOSITION OF JOSEPH BURDA

25                  CONFIDENTIAL

26                  \*\*\*\*\*

27                  ANSWERS AND DEPOSITION OF JOSEPH BURDA, produced as a  
28                  witness at the instance of the Plaintiffs, Henry Espejo and  
29                  Faye Levins, individually and on behalf of all others  
30                  similarly situated, taken in the above-styled and -numbered

1 cause on the 21st day of July, 2015, A.D., beginning at  
2 9:02 a.m., before Charlotte Haynsworth, a Certified  
3 Shorthand Reporter in and for the State of Texas, in the  
4 offices of Esquire Deposition Solutions, located at  
5 1700 Pacific Avenue, Suite 1000, Dallas, Texas, in  
6 accordance with the Federal Rules of Civil Procedure and  
7 the agreement hereinafter set forth.

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1 MR. PIETRKOWSKI: Object to the form.

2 A. On a recurring basis? So --

3 Q. (BY MR. LARRY) So I think -- my -- my  
4 understanding -- and correct me if I'm wrong -- is that  
5 there's a nightly batch process essentially that involves  
6 uploading the list of accounts to be called. Correct?

7 MR. PIETRKOWSKI: Object to the form.

8 A. We have a file that's generated each night --

9 Q. (BY MR. LARRY) Okay.

10 A. -- and provided to us.

11 Q. Provided to your team?

12 A. Yes.

13 Q. Okay. And so your team is involved in -- is there  
14 an uploading process for that -- for that file?

15 A. Yes. We load it into the system.

16 Q. Okay. And you're -- are you involved at all in  
17 the creation of the con- -- I think I misspoke there -- the  
18 creation of the content of that file at --

19 A. No, sir.

20 Q. -- all? Okay.

21 Can you describe for me the process of  
22 uploading that file into the system?

23 A. So basically we just get a file, put in a file  
24 share location. And then we have a -- within the Aspect  
25 system we have a -- a process where we actually import the

1 file and it loads that file into a database.

2 Q. Is that a -- how long does that process take?

3 A. Off the top of my head, I couldn't say. I mean --

4 Q. When a -- is this something you do personally or  
5 do people underneath you do it?

6 A. People under me do it.

7 Q. Okay. Do you have any understanding of how long  
8 it takes them to run that importing process?

9 A. No.

10 Q. Okay.

11 A. Not right off the top.

12 Q. And you -- just to be clear. You don't have any  
13 idea of how long it takes the system to do that. Correct?  
14 So you understand there would be a difference between --  
15 there could be a difference, I would imagine, between the  
16 person doing their portion of the process -- so clicking  
17 the buttons that are necessary to make the importing  
18 happen --

19 A. Uh-huh.

20 Q. -- and the system actually running the import,  
21 which could take longer than that conceivably. Right?

22 MR. PIETRKOWSKI: Object to the form.

23 Q. (BY MR. LARRY) You don't have any sense of how  
24 long either part of that takes?

25 A. I mean -- I -- I don't know how long it takes for

1 the file to import.

2 Q. Okay.

3 A. But the agent would go through a few steps to --  
4 to make sure it happens.

5 Q. Okay. And --

6 A. I've --

7 Q. -- when does that typi- --

8 A. -- I've never timed it.

9 Q. Okay. When does that typically happen?

10 A. When my agents show up in the morning. So around  
11 5:30.

12 Q. Okay. And when is that typically done by?

13 A. Our SLA is -- as long as it's before 7:00.

14 Q. Okay.

15 A. So --

16 Q. So generally it takes less than an hour and a half  
17 start to finish?

18 A. Correct.

19 Q. Okay. So once it's -- once that file is uploaded  
20 or imported into the Aspect system, are you -- are you  
21 involved at all in the oversight -- or in overseeing the  
22 execution of that file? So what I mean by that is actually  
23 ensuring that the numbers in that file get called.

24 A. Yes.

25 Q. Okay. And what is your role in that process?

1           A. So we -- we basically -- once a file's loaded and  
2 we create our campaigns, we're responsible for connecting  
3 those calls to agents.

4           Q. Okay. Now, you mentioned creating campaigns. Is  
5 that a process that you're involved in?

6           A. Yes, we --

7           Q. And what is your involvement in that?

8           A. My involvement -- I don't physically touch it but  
9 my department -- we create filters to filter the file and  
10 create campaigns.

11          Q. Okay. And what -- what is involved in that  
12 process? What are some example of filters that you create?

13          A. They're just -- they're just high-level filters  
14 based off the information provided to my team. So I don't  
15 -- I'm trying to think how to word it. We get pre-defined  
16 values in the file and then we look for those values to  
17 create the campaigns.

18          Q. Can you explain what you mean by "pre-defined  
19 values"?

20          A. Like a -- like a value of -- I'm trying to think  
21 how to say it. So it's a -- the business defines a  
22 strategy and within those strategies -- they give us a  
23 value and say look for this value to create this strategy.

24          Q. Okay.

25          A. Does that make sense? So --



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1 wasn't you doing the hands-on. It was your team. Right?

2 A. They -- yeah, they're running the --

3 Q. Okay. So they take what's essentially -- and  
4 correct me if I'm wrong here -- a set of criteria and  
5 program the dialer to make the calls based on those.

6 Correct?

7 A. No, they take criteria to build a file.

8 Q. Okay. And then -- okay.

9 A. Uh-huh.

10 Q. To build the campaign file.

11 A. Correct.

12 Q. Okay. But they aren't the ones determining the  
13 criteria.

14 A. Correct.

15 Q. Okay. Who is it that determines those criteria?

16 A. That would come from Wayne Nightengale and his  
17 team.

18 Q. Okay. Okay. So once your team has built the  
19 campaigns, what's the next step?

20 A. Wait till people come to work.

21 Q. Okay. And -- and then what happens?

22 A. We'll start -- we'll start those campaigns to a  
23 specific target.

24 Q. Okay.

25 A. And then when agents log into the system and put

1 them in a -- put themselves in a status to be available to  
2 take phone calls, Aspect will lau- -- launch phone calls.

3 Q. Okay. And now -- when you said specific target --  
4 can you just clarify what you meant by that?

5 A. Like a queue.

6 Q. Okay.

7 A. A group of agents.

8 Q. Okay. Okay. So what you're going to do then --  
9 and again, correct me if I'm wrong -- is -- the campaign's  
10 built and you're going to assign -- is it a campaign to a  
11 particular queue of calling agents?

12 A. Yes.

13 Q. Okay. And then once those agents come in and  
14 they've logged into the system and they've got, you know,  
15 their workstation set up and everything and they're into --  
16 they've put themselves on their systems into what,  
17 available or some other status?

18 A. Idle.

19 Q. Okay. As opposed to -- I'm sure there's an  
20 unavailable one. There's, you know --

21 A. Not ready --

22 Q. -- in the process of a call.

23 A. Not ready for a phone call.

24 Q. Okay. So once they are -- is it once a single  
25 person is in that -- in the right status -- then it's go

1 time and the calls start being made?

2 MR. PIETRKOWSKI: Object to the form.

3 A. Once an agent becomes available, the system would  
4 dial for that agent.

5 Q. (BY MR. LARRY) Sure. So what -- it would start as  
6 soon as an agent is available.

7 A. Available, yes.

8 Q. Okay. Okay. And then in terms of -- once that  
9 process is actually up and running, how much involvement do  
10 you have -- well, correction -- how much involvement does  
11 your department have in determining the placement and  
12 routing of calls made and execution of a given campaign?  
13 Or would that be part of the campaign build itself?

14 MR. PIETRKOWSKI: Object to the form.

15 A. So -- trying to understand where you're going or  
16 what you're -- what you're saying here. So -- my team  
17 isn't physically launching the phone calls.

18 Q. (BY MR. LARRY) Correct.

19 A. Is that what you're asking? Yeah.

20 Q. That wasn't what I was asking.

21 A. Okay.

22 Q. That's a good starting point. So your team's not  
23 physically launching the phone calls. Do they have any  
24 involvement in, say, the number of calls made at any given  
25 time?

1 A. Those are the forms that we use.

2 Q. Okay. So to your knowledge, Santander doesn't use  
3 Blaster dialing mode.

4 A. We do not use that.

5 Q. Okay. What about Precision dialing mode?

6 A. No, sir.

7 Q. Automatic dialing mode?

8 A. We do not use that.

9 Q. Okay. And as far as predictive, preview, and  
10 manual -- are you familiar with how -- how those modes work  
11 from the Aspect side? So how the dialer actually  
12 effectuates each of those modes.

13 A. Yes.

14 Q. Okay. So -- does the description there of  
15 Predictive dialing mode -- is that consistent with your  
16 understanding of how predictive dialing mode works in the  
17 Aspect dialer?

18 A. Yes, sir.

19 Q. Okay. And you said Santander does use that mode.  
20 Correct?

21 A. Yes, sir..

22 Q. Do you know whether that mode was used to place  
23 calls to Faye Levins?

24 A. Yes.

25 Q. Okay. And, if necessary, you can consult

1 Q. Do you know -- do you have any sense of how long  
2 Santander has been using predictive dialer mode?

3 A. Not -- not beyond the time that I've been there.

4 Q. Okay. Do you know whether Santander used  
5 predictive dialing mode as early as 2009?

6 A. Yes.

7 Q. Okay. Did Santander use predictive dialing mode  
8 from 2009 through -- to the end of 2012?

9 A. Yes.

10 Q. Okay. So when predictive dialing mode is used --  
11 what happens -- do you know what happens if nobody answers  
12 the phone?

13 A. On a call if no one answers the phone?

14 Q. In predictive mode.

15 A. Okay. If no one answers the phone, you would get  
16 a -- no answer --

17 Q. Okay.

18 A. -- and the call would be dropped.

19 Q. Can pre- -- do you know whether predictive mode  
20 can be used to deliver a voicemail if voicemail picks up?

21 A. If it can play -- if Aspect could play a message?

22 Q. In predictive mode. Correct.

23 A. Yes, you could pass an answering machine to an  
24 agent and the agent could leave a message.

25 Q. Okay. Could it be passed to a -- a prerecorded

1 message to deliver to the voicemail?

2 A. Yes, Aspect can --

3 Q. And it --

4 A. -- play a message.

5 Q. And it can do that in predictive mode?

6 A. Yes.

7 Q. Okay. Now, looking at the other way. If -- what

8 happens if somebody answers a call made in predictive mode?

9 A. Then we would pass that person to an agent.

10 Q. Okay. Do you know if that person could be passed

11 -- or do you know if a -- a recorded message could be

12 delivered to that person upon answering by the Aspect

13 dialer operating in predictive mode?

14 A. Could it, yes.

15 Q. Is that something that happens?

16 A. No, we do not do that.

17 Q. Okay. So it's -- it's capable of doing that. But

18 in practice -- if somebody answers, Santander's practice is

19 to route them to a live call center agent.

20 A. Yes, sir.

21 Q. Okay. Now -- we may have touched on this but --

22 when -- when your team is -- is building -- is -- is

23 implementing the campaign -- so entering them into or

24 building -- whatever the right terminology is -- within the

25 Aspect dialer -- the campaign that's been defined by

1 MR. LARRY: Sure.

2 Q. (BY MR. LARRY) If there's a Faye Levins specific  
3 way to determine it, that would be a good answer. If  
4 there's a general way, that would also --

5 A. I do not know a way to determine how the call was  
6 launched.

7 Q. Okay. So in preview mode -- do you know what  
8 happens if the call is launched and nobody answers?

9 A. The agent would hear the ringing phone and then  
10 decide to hang up.

11 Q. Okay. Do you know if there is -- in preview mode  
12 -- do you know if there is the functionality available to  
13 have a recorded message delivered to the -- the recipient  
14 of the call?

15 A. No.

16 Q. No, there's not?

17 A. There's not.

18 Q. Okay. So if a recorded message were being  
19 delivered to a voicemail or answering machine, that would  
20 not have happened in preview mode. Correct?

21 A. Correct.

22 Q. Okay. Let's go on to manual mode. We talked a  
23 little bit earlier about -- well, actually -- can you just  
24 go ahead and review -- review the bullet point entry here  
25 on 202 regarding manual?

1 A. I'm good.

2 Q. Okay. Does that seem accurate to you?

3 A. Yes.

4 Q. Okay. We talked a little bit earlier about the  
5 actual physical process an agent would go through in making  
6 calls in dialer -- in manual mode.

7 A. Okay.

8 Q. Does this -- does this entry -- this bullet point  
9 -- does that refresh your recollection at all or -- or  
10 clarify anything for you?

11 A. So clarify. On manual dialing -- I wasn't --  
12 I'm -- I mean, this is -- this is a good definition of  
13 manual dialing and that mode so -- I guess -- maybe restate  
14 the question.

15 Q. Well, I -- I can just ask a different question.  
16 So do you know what -- do you know what the speed dial  
17 directory referred to there is?

18 A. No.

19 Q. Okay. Do you know -- do you know whether  
20 Santander -- Santander used manual mode during the time  
21 period -- from 2009 to 2012?

22 A. If we used the mode, yes.

23 Q. Do you know if -- does Santander still use it?

24 A. Yes.

25 Q. Okay. Do you know whether that mode was used to

1           A. So the -- the call -- the dial is being placed  
2 through the Aspect Unified IP system.

3           Q. (BY MR. LARRY) Okay. So that's -- and all manual  
4 mode calls -- to your knowledge, all manual mode calls  
5 Santander made from 2009 to 2012 would have been made  
6 through the Aspect Unified system. Correct?

7           A. My understanding, yes.

8           Q. Okay. All right. Now we can move on to 219.  
9 Now, if you look under -- look at Settings. There's --  
10 there's a list that goes 1 to 11. It stretches from 219 to  
11 220. Do you see what I'm talking about?

12          A. The 1 through 8?

13          Q. Yeah.

14          A. Oh, okay.

15          Q. Then on -- on 220 you've got 9 through 11.

16          A. Yes, sir.

17          Q. Okay. Can you go ahead and just familiarize  
18 yourself with that Settings section that stretches from 219  
19 to 220?

20          A. Okay.

21          Q. Okay.

22          A. Okay.

23          Q. Okay. So -- does this portion of the manual that  
24 we're looking at, 219 to 220 -- do those -- does that  
25 describe portions of the -- of the campaign building

1 enter -- account for?

2 A. No, sir.

3 Q. Is that ever something you've encountered?

4 A. I understand the term but we don't.

5 Q. Okay. It's not an adjustable setting.

6 A. No.

7 Q. Okay. If you turn to 698. Do you see the entry

8 for Predictive Mode -- Predictive Dialing Mode? Excuse me.

9 A. Yes.

10 Q. Okay. Can you go ahead and -- and read that to

11 yourself?

12 A. Okay.

13 Q. Does that seem consistent with -- with your

14 understanding of how predictive dialing mode works?

15 A. Yes, sir.

16 Q. Okay. So positive voice detection -- do you see

17 where it says that in there?

18 A. Yes.

19 Q. Does that -- is that what you were talking about

20 earlier? In terms of the system recognizing when a -- a

21 live person has answered the phone.

22 A. Yes, sir.

23 Q. Okay. Do you know how -- do you know whether the

24 system can distinguish between a live person answering and

25 a voicemail that starts with a live person's voice?

1 MR. LARRY: Correct.

2 MR. PIETRKOWSKI: -- as we sit here so let's  
3 table --

4 MR. ROLFES: Can we -- can we --

5 MR. PIETRKOWSKI: -- that.

6 MR. ROLFES: Can we go off the record?

7 MR. LARRY: Yeah. Sure.

8 (Break taken from 11:39 a.m. to 11:45 a.m.)

9 Q. (BY MR. LARRY) So -- we're back on the record.  
10 I've -- I've talked to your counsel. My understanding is  
11 that we're gonna be able to loop back and talk a little bit  
12 about the hardware issue that we were just fighting about.

13 A. Okay.

14 Q. So -- and I think I have a better idea of how to  
15 get at this now after that talk. So in terms of the actual  
16 hardware that somebody's using to place calls and is -- is  
17 available to a call center agent --

18 A. Uh-huh.

19 Q. -- regardless of what mode they're dialing in --  
20 can you please explain the different pieces of hardware  
21 that they have there available to them?

22 A. Sitting on their desk?

23 Q. Sitting on their desk, wherever.

24 A. Okay.

25 Q. That they have available to them to physically

1 make the calls happen.

2 A. So they have a monitor and a keyboard and a mouse  
3 and a computer --

4 Q. Okay.

5 A. -- desktop -- whatever -- box. And they log into  
6 Aspect. So they'll log -- well, they log into My Supervi-  
7 -- to Aspect via My Supervisor.

8 Q. Okay.

9 A. So they put in their -- their username and  
10 password, blah, blah, blah. They make that audio path via  
11 their phone, which is a -- plugged into the computer. And  
12 then at that point there's a connection where My Sup is  
13 talking to Aspect via -- via a -- there's a term -- called  
14 an API.

15 Q. Uh-huh.

16 A. And basically at that point My Supervisor is  
17 sending commands back and forth telling Aspect what to do.

18 Q. Okay. And when you said phone -- were you  
19 referring to a headset?

20 A. Yes.

21 Q. Okay. And your understanding is that -- you --  
22 you don't know whether calls were made to Faye Levins using  
23 manual mode. But regardless of the mode they were -- they  
24 were made in -- the agents handling the calls would have  
25 had the same set of equipment.

1 point?

2 A. So -- be re- -- it would require someone from my  
3 team to actually point those campaigns to a target with a  
4 group of agents in it. And then before any type of dialing  
5 could commence, an agent has to log into the system and put  
6 themselves in a status to be available to take a phone  
7 call. So logging in, username, password, validation code  
8 and then defining when I log in, do I want to go into a  
9 meeting to meet with my manager or am I ready to take a  
10 phone call?

11 Q. Are there other choices besides going into a  
12 meeting?

13 A. Well -- yeah, we call them not ready codes. So  
14 meeting, coaching -- anything the business defines that we  
15 would like to give the agent time off the phone. Personal  
16 time, you have to go to the rest room. Anything like that.

17 Q. Are these not ready codes something that can be  
18 used throughout the day?

19 A. Yes.

20 Q. And agents do use them?

21 A. Yes.

22 Q. And when a not ready code is pressed -- does it  
23 have any effect on the predi- -- on the dialer?

24 A. Yes. At that point, the agent's no longer  
25 available and they're taken out of the -- they're not idle.

1 So a call would not be launched in -- in their place for  
2 them. If that makes sense.

3 Q. What about when an agent is on a call with a  
4 consumer and they want to finish that call and then  
5 indicate their availability for the next call? Is there  
6 any human intervention in that process?

7 A. So for them to -- before they would get the next  
8 call -- once they complete the call with the -- the current  
9 person on the phone, they would go into a -- when the call  
10 disconnects, they would go into a wrap status. And then at  
11 that point they would need to disposition the call. Hit  
12 the Done button to disposition it. And then they would  
13 have to hit a Get Next button to move themselves into an  
14 idle state. So basically until they've made that  
15 determination to submit the disposition and be ready,  
16 they're in a state that is unavailable for the predictive  
17 campaign to identify them as an available resource.

18 Q. So if they're on a call with a consumer and the  
19 consumer hangs up -- are they immediately going to get the  
20 next call through the dialer?

21 A. No.

22 Q. So what has to happen for that next call to come  
23 to them?

24 A. The agent would -- again, they would have to  
25 disposition the phone call and then they would have to hit

1 the Get Next button to move into an idle status.

2 Q. What does it mean --

3 A. Otherwise --

4 Q. -- "disposition the phone call"?

5 A. Put a -- put a call result on there. So if I'm  
6 talking to the customer and they make a payment, I might  
7 disposition the call. A promise to pay.

8 Q. And then they have to press a -- a Done button?

9 A. They have to hit a Done button to submit the note  
10 into the system. And then they would hit Get -- when  
11 they're ready, they would hit Get Next. And then they go  
12 into what we call an idle status. And once you're idle --  
13 you're available at that point to take a phone call.

14 Q. And until they go into the idle status, they're  
15 unavailable to receive calls.

16 A. Correct.

17 Q. And what effect does that have on the dialer?

18 A. The dialer would not -- it would not launch calls.  
19 Understanding that that person's available to take those  
20 phone calls -- it would -- it only would make calls based  
21 on agents that are available at that time to take calls.

22 Q. And at the beginning of the day is there human  
23 intervention involved in uploading numbers to the dialing  
24 system?

25 A. Yes. My guys have to go in and actually upload

# **TAB 8**

In the Matter of:

*Henry Espejo, et al.*

*vs.*

*Santander Consumer USA, Inc., et al.*

---

*Henry Espejo*

*December 3, 2014*

---

 ORIGINAL

**MERRILL CORPORATION**  
LegalLink, Inc. 311 South Wacker Drive  
Suite 300  
Chicago, IL 60606  
Phone: 312.386.2000  
Fax: 312.386.2275

1 1411 line, did anyone ever ask you if this was a  
2 contact number that they could contact you at?

3 A. I don't believe so. No. They never asked  
4 me.

5 Q. Did they ever say in sum and substance, is  
6 this a good contact number for you, Mr. Espejo?

7 A. Oh, for me?

8 Q. Yes.

9 A. Yeah, they would ask me, Can we call you  
10 on this number?

11 Q. What did you say?

12 A. I said yes. I mean, it's my number.

13 Q. Do you know if your wife has a cell phone?

14 A. She doesn't, to be honest with you. Well,  
15 I think she got one with my son.

16 Q. And what is your son's name?

17 A. Andrew.

18 Q. Do you know if Andrew has made a payment  
19 for this car?

20 A. Not really. No, he's never paid a  
21 payment.

22 Q. He's never made a payment on your wife's  
23 loan, is what I wanted to say?

24 A. No.

25 Q. How old is your son?

1 A. I don't know what it means.

2 Q. So you have no idea one way or the other  
3 if you get charged for incoming calls?

4 A. I don't know what it means.

5 Q. Well, do you know if you get charged for  
6 incoming calls?

7 MR. BALABANIAN: Objection, asked and  
8 answered.

9 THE WITNESS: No, I don't know.

10 BY MR. ROLFES:

11 Q. Did you ever request that Santander stop  
12 calling your 1411 number?

13 A. Yes, I did.

14 Q. And when did you do that?

15 A. Every time they would call, to be honest.

16 Q. Every time you would say, Don't call this  
17 number?

18 A. Yeah, I would ask them.

19 Q. Okay. Can you tell me what you said to  
20 them along those lines?

21 A. I would say very specifically, Listen,  
22 this is not my car. That is my wife's car. Please  
23 call her. Very specifically.

24 Q. Okay. Anything else you said with regard  
25 to whether Santander should call you or not?

1 calling me at that number? Things like that. I  
2 told you that.

3 Q. So now your testimony is, I do not want to  
4 be called. Is that what you said?

5 MR. BALABANIAN: No. His testimony is his  
6 testimony. You just said that, Jim. You can  
7 read back what he said. We're not going to do  
8 asked and answered. We're not going to ask him  
9 the same question six times so you can try to  
10 get him to change his testimony. He just  
11 answered. You said what specifically.

12 BY MR. ROLFES:

13 Q. What made you remember that you had said,  
14 I don't want to be called, when Mr. Balbarian --

15 MR. BALABANIAN: Balabanian.

16 BY MR. ROLFES:

17 Q. -- Balabanian asked you the question?

18 A. What was that?

19 Q. What made you recall that that's what you  
20 had said when Mr. --

21 A. Because that's what I've been saying. I  
22 didn't want them to call. I've always said that.  
23 Why are you calling me? Don't call me. Call my  
24 wife. Call my number -- the 592 number, home  
25 number.

1                   That's what she's always used.

2           Q.    How about when you called them? Did you  
3           want to talk to them, for instance, on the time that  
4           you were asking that you could make a payment so she  
5           wouldn't have her car repossessed?

6           A.    Say that again.

7           Q.    Did you want to call Santander -- you  
8           called Santander to talk to them about the payment  
9           related to the repossession --

10          A.    Yes.

11          Q.    -- is that right?

12          A.    Yes.

13          Q.    Did you say, in part of that conversation,  
14       Hey, don't call me again?

15          A.    Well, I was hoping that that was the last  
16       conversation that I would have with them, yes.

17          Q.    So you didn't say it on that conversation?

18          A.    You're being very specific on that day.

19       I'm talking in general, every time they would call  
20       me I would say that. Specifically that day? I know  
21       I told them a lot of times -- almost every time they  
22       would call, I would give them the wife's number that  
23       she gave, the 592, the home number.

24          Q.    Do you remember in some of these  
25       conversations, when you were talking about making

**TAB 9**

1 IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

2 NO. 11 CV 8987

4 Honorable Charles P. Kocoras

HENRY ESPEJO, Individually and  
6 on behalf of all others  
similarly situated.

Plaintiff

8 vs.

9 SANTANDER CONSUMER USA INC., an  
Illinois corporation,

10

Defendant.

11 \_\_\_\_\_ /

12

14 66 West Flagler Street  
Miami, Florida

15 December 3, 2014

Wednesday, 1:16 p.m.

.16

11

19 DEPOSITION

20

OF

21

23

24 Taken on Behalf of the Defendant

1 was an institution known as Sovereign or Sovereign

2 Bank?

3 A. Sovereign. Can you repeat the question?

4 Q. Sure. Did you ever come to know that the

5 financial institution that provided the financing

6 for your car was referred to -- had the name of

7 Sovereign or Sovereign Bank?

8 A. Yes.

9 Q. Okay. Do you have in front of you

10 Defendant's Exhibit 5? Defendant's Exhibit 5 is a

11 document a little cut off the top, but the top

12 starts with the 3508 Torremolinos Avenue. It is

13 Bates numbered SCUSA/E 10 and 11.

14 Can you take a moment to familiarize

15 yourself with that document?

16 A. Yes.

17 Q. Do you see on this document about half --

18 maybe four inches down, there is an assignee or

19 lender listed there?

20 A. Yes, I do.

21 Q. Do you see Sovereign Bank?

22 A. Yes.

23 Q. Did you ever make any payments on this

24 loan to Sovereign Bank; do you recall?

25 A. I don't remember.

1 Q. Do you recall any time receiving any  
2 correspondence that indicated that Santander  
3 Consumer USA had merged with or in some way become  
4 the same as Sovereign Bank?

5 A. I don't remember.

6 Q. Is there a point in time when you became  
7 aware that your loan, the amount that you owed on  
8 your loan was owed to Santander?

9 A. The amount that I owed at this moment?

10 Q. No. On the loan.

11 Did there ever come a time that you found  
12 out that Santander was the person you had to make  
13 loan payments to?

14 A. Oh, yes.

15 Q. Can you tell me when that occurred,  
16 roughly?

17 A. No, I don't remember.

18 Q. Were you ever contacted by someone who  
19 claimed to be from Sovereign Bank?

20 A. No, I don't think so.

21 Q. Do you know who has the legal title to  
22 your car?

23 A. At the moment, I don't know.

24 Q. Did you ever have title to your car?

25 A. No.

**TAB 10**

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF ILLINOIS

3 EASTERN DIVISION

4 ARICA BONNER, et al.,

5 on behalf of themselves and

6 all others similarly situated,

7 Plaintiffs,

8 Vs. No: 1:12-CV-04671

9 SANTANDER CONSUMER USA, INC.,

10 Defendant.

11

12

13

14

15

16 DEPOSITION OF: Faye Maria Levins

17 DATE: July 14, 2015

18 TIME: 9:30 a.m.

19 LOCATION: Burr & Forman, LLP

20 420 20th Street North, Suite 3100

21 Birmingham, Alabama 35203

22

23

ORIGINAL

1 I'll let you review that.

2 A. Okay. Yes, this agreement here looks  
3 like from Adamson Ford on a credit  
4 application.

5 Q. Okay. So this is a credit application  
6 that you completed when you purchased your  
7 car from Adamson Ford?

8 A. That is correct.

9 Q. Is that your signature on the first  
10 page?

11 A. That is correct.

12 Q. And it's dated January 31st, 2009?

13 A. That is correct.

14 Q. Does that refresh your memory of when  
15 you purchased the 2007 Impala from Adamson  
16 Ford?

17 A. Yes, January 31st of 2009, that is  
18 correct.

19 Q. Did you provide the information that  
20 was put into the second page of --

21 A. Yes.

22 Q. -- this credit application?

23 A. Yes.

1       Q. I see that there are two -- it's the  
2       same phone number, , that's are  
3       handwritten under home phone number and  
4       cellphone number. Did you provide that phone  
5       number to Adamson Ford?

6       A. Yes.

7       Q. Is that your handwriting?

8       A. Yes.

9       Q. And it says employed by T-Mobile.

10      A. Yes.

11      Q. So you were employed by them at the  
12     time?

13      A. Yes, at the time, 2009.

14      Q. And that was your home address at the  
15     time, : that is on this  
16     application?

17      A. That is correct.

18      Q. And it says that you have been employed  
19     at T-Mobile for eight months as of January,  
20     2009. Does that seem accurate?

21      A. That seems accurate, yes.

22      Q. So you started working at T-Mobile in  
23     the middle of 2008; correct?

1       A. Yes. The company had policies and  
2       procedures to go by.

3       Q. (BY MR. PIETRKOWSKI) Do you remember  
4       how much time you typically gave the T-Mobile  
5       customers if they needed more time?

6       A. I can't remember exactly. It all  
7       depended on the situation.

8       Q. Did sometimes the same person, the same  
9       T-Mobile customer call twice asking for  
10       payment arrangements?

11       A. Rarely.

12       Q. When you received this credit  
13       application and signed it, did you read  
14       everything on these two pages?

15       A. No. I can't tell you that I read every  
16       word on there, no, I can't say I did that.

17       Q. On the second page of Exhibit 6 -- if  
18       you will turn to the second page.

19       A. Okay.

20       Q. If you will look at the very bottom --

21       A. Yes.

22       Q. -- it says "By providing my cellphone  
23       number, I give my prior expressed consent to

1 receive calls and text messages from the  
2 creditor or its third-party debt collector at  
3 that number, including calls and messages  
4 made by using an autodialer or prerecorded  
5 message."

6 Do you remember reading that language  
7 when you signed the credit application?

8 A. Yes, for

9 Q. When you were receiving calls at  
10 T-Mobile in your role as a collector, did you  
11 ever get calls from people who complained  
12 that they receiving too many phone calls from  
13 T-Mobile?

14 A. We didn't call the customer, the  
15 customer called us.

16 Q. Right. I know you didn't, it wasn't  
17 your job to call them, but when they called  
18 in to you, did you ever receive complaints  
19 from them about whoever's job it was to call  
20 that they are getting too many?

21 MR. LARRY: Objection, relevance. Go  
22 ahead.

23 A. Rarely.

1 Q. And that was after the house fire?

2 A. Yes.

3 Q. And then you move into your current  
4 residence at 7518 5th Avenue?

5 A. Yes.

6 Q. Do you remember what year you lived  
7 with your daughter?

8 A. I moved -- I lived with my daughter I  
9 would say maybe in the year of 2012.

10 Q. All right. Do you have any reason to  
11 believe that the calls that are -- the notes  
12 that appear on this exhibit, Exhibits 13 and  
13 14, are inaccurate?

14 MR. LARRY: Objection, foundation.

15 A. No, I don't have any reason to believe  
16 they are inaccurate, I don't have any reason  
17 to believe that.

18 Q. (BY MR. PIETRKOWSKI) All right. Let me  
19 ask you without looking documents just a  
20 general question. Are you familiar with the  
21 term speed pay?

22 A. No.

23 Q. Did you ever make a payment --

1 Do you remember a conversation where they --  
2 for instance, they -- a Santander employee  
3 asked you whether your address was still  
4 current?

5 A. Yes.

6 Q. And did that happen often when you  
7 spoke to the Santander employees?

8 MR. LARRY: Objection, vague. Go  
9 ahead.

10 A. Yes.

11 Q. (BY MR. PIETRKOWSKI) What about your  
12 current cellphone number, did Santander  
13 employees when you spoke with them, did they  
14 attempt to verify that this was your current  
15 cellphone number?

16 A. Would they attempt to verify? They  
17 would repeat what -- is it okay. To call you  
18 at this number. So I would say, yes.

19 Q. When they asked that question, they  
20 give you the number that they were referring  
21 to, and then you would agree or disagree;  
22 correct?

23 A. Yes.

1           Q. So let me just kind of give you a --  
2        let me see if I can find an example.

3           MR. PIETRKOWSKI: Let's go off the  
4        record for a moment.

5                           (Short recess was had.)

6           MR. PIETRKOWSKI: Back on the record.

7           Q. (BY MR. PIETRKOWSKI) You mentioned  
8        that your daughter, Jacqueline, sometimes  
9        spoke for you and you gave her authorization  
10      to speak to Santander on your behalf?

11       A. Yes. I had to speak to Santander to  
12      give them authorization to discuss the  
13      account with my daughter.

14       Q. Do you know how many times,  
15      approximately, that happened that your  
16      daughter spoke with Santander?

17       A. No, I don't know how many times.

18       Q. So going back to the verifications for  
19      a moment, I did find a couple of examples.  
20      If you look -- this is one of the pages we  
21      already saw for December 29th, 2009 --  
22      December 22nd, 2009, there's a line that says  
23      14:22 RECC. And if you kind of go across

1 there, it says "Agent initiated recording for  
2 deferment"; right? And then underneath that,  
3 it says "Verifications were required for Faye  
4 Levins; Mailing address verified, no change  
5 required; physical address verified, no  
6 change required; home phone verified, no  
7 change required; cellphone verified, no  
8 change required; e-mail verified, no change  
9 required; employer verified, no change  
10 required."

11 Does that refresh your memory of the  
12 types of information that Santander would be  
13 asking you for during these calls --

14 A. Yes.

15 Q. -- to verify?

16 A. To verify the information they asked.

17 Q. And they're asking -- when they verify  
18 it, how did those conversations go?

19 A. I simply verified what was asked.

20 Q. And they were asking for your current  
21 information and you had to tell them whether  
22 it was current or not; is that correct?

23 A. Yes.

1       Q. And this didn't just happen once, it  
2       happened a number of times over the years;  
3       correct?

4       A. That is correct.

5       Q. Now, there were a number of times over  
6       the course of your financing of the car that  
7       your payments were late; correct?

8       A. Yes.

9       Q. I mean, what I have written down just  
10      from analyzing it is 18 times you were more  
11      than 30 days late on a payment, 11 times you  
12      were more than 60 days late, and then four  
13      times you were more than 90 days late. Does  
14      that sound accurate to you?

15      A. Yes.

16      Q. And sometimes you had payment returned  
17      because your bank account was frozen or  
18      closed; is that right?

19      A. Yes.

20      Q. So given the history of late and  
21      returned payments, were you surprised to be  
22      getting collection calls from Santander?

23            MR. LARRY: Objection, relevance.

1                   MR. LARRY: Same objection. You can go  
2 ahead.

3                   MR. PIETRKOWSKI: And Nick, I mean, can  
4 we just stipulate to that because you sent me  
5 an e-mail saying that.

6                   MR. LARRY: I thought we had. We're  
7 fine stipulating to that.

8                   MR. PIETRKOWSKI: I just want to get it  
9 on the record.

10                  MR. LARRY: Off the record.

11                  MR. PIETRKOWSKI: Okay.

12                  (OFF-THE-RECORD.)

13                  MR. PIETRKOWSKI: So we are back on the  
14 record after a discussion, you know, with  
15 plaintiff's counsel. We are stipulating that  
16                  | is not a number that is at issue  
17 with respect to the Telephone Consumer  
18 Protection Act claims.

19                  Nick, is that right?

20                  MR. LARRY: Let's make sure that was  
21 the right one.

22                  That's correct. So stipulated.

23                  Q. (BY MR. PIETRKOWSKI) And then there

1 of any of those calls made to Santander from  
2 the 6074 number?

3 A. No.

4 Q. Did anyone else use the 6074 number  
5 besides Jacqueline?

6 A. No.

7 Q. Do you know if Jacqueline ever provided  
8 the 6074 number to Santander as a number  
9 where she could be reached?

10 MR. LARRY: Objection, foundation.

11 A. I'm not sure.

12 Q. (BY MR. PIETRKOWSKI) Did you ever  
13 provide the 6074 number as a number where you  
14 could be reached?

15 A. Yes.

16 Q. Do you remember when?

17 A. No.

18 Q. What about just like the year that you  
19 provided it?

20 A. For 6074?

21 Q. Yes.

22 A. Probably 2009 or 2010.

23 Q. Let's talk about the 9678 number, and

1 A. Okay.

2 Q. Okay. There's one, 5/28/2010 --

3 A. Okay.

4 Q. -- at 003 MGUP.

5 A. Okay.

6 Q. And, again, the same information, it  
7 has the 6074 number. Do you have any memory  
8 of providing the 6074 number for that  
9 MoneyGram payment?

10 MR. LARRY: Objection to form.

11 A. I must have used that phone number.

12 Q. (BY MR. PIETRKOWSKI) And then if you  
13 go up a little bit on the page to 6/11/2010,  
14 003 MGUP, the same information --

15 A. The same information.

16 Q. -- the 6074 number.

17 So just looking at these entries, do  
18 you have any reason to believe that you did  
19 not provide your 6074 number in connection  
20 with those MoneyGram payments?

21 A. No, I probably provided the number in  
22 case something went wrong, they could call my  
23 daughter. I probably used the number as a

1 reference in case something was wrong, they  
2 could call this number.

3 Q. And if you flip a few pages back before  
4 that to 11-11-2010 --

5 A. Okay.

6 Q. -- November 11, 2010.

7 A. Okay.

8 Q. And then if you look at 11/11/2010,  
9 1503 WUUP --

10 A. Okay.

11 Q. -- and WUUP, to explain, stands for  
12 Western Union. This is a Western Union  
13 payment. And again, it listed your name,  
14 your address, and it looks like the 6074  
15 number.

16 So, you know, the same question: Any  
17 reason to believe that you did not provide  
18 your 6074 number in connection with the  
19 Western Union payment you made on that date?

20 MR. LARRY: Objection, foundation,  
21 speculation.

22 A. That was probably the phone number that  
23 was given is all I can say on those payments.

1           Q. (BY MR. PIETRKOWSKI) And then up  
2        farther on the same page on 12/10/2010 there  
3        is another 1501 WUUP with the same  
4        information, the 6074 number. The same  
5        question --

6           MR. LARRY: Same objection.

7           Q. -- any reason to believe you did not  
8        provide your 6074 number in connection with  
9        the 12/10/2010 Western Union payment?

10          MR. LARRY: Same objection.

11          A. I probably provided that number  
12        according to the records.

13          Q. (BY MR. PIETRKOWSKI) And then one  
14        more. Flip back one page to 1/6/2011,  
15        12 o'clock WUUP.

16          A. Okay.

17          Q. And, again, this appears to be another  
18        Western Union payment on January 6th, 2011  
19        and it does list the 6074 number.

20          A. Okay.

21          Q. Any reason to think you didn't provide  
22        the 6074 number in connection with that  
23        Western Union payment?

1                   MR. LARRY: Objection, foundation,  
2 speculation.

3                   A. It probably was provided.

4                   Q. (BY MR. PIETRKOWSKI) Do you know if  
5 you ever verified the 9678 number when you  
6 spoke to Santander?

7                   MR. LARRY: Objection, form.

8                   A. Did I ever verify the number?

9                   Q. (BY MR. PIETRKOWSKI) Did you ever  
10 verify the 9678 number as your current number  
11 when you spoke with Santander?

12                  A. Yes, I probably did. I had that phone  
13 number, and that was one of the numbers I  
14 probably -- yes.

15                  Q. Do you remember when you verified it?

16                  MR. LARRY: Objection, misstates the  
17 record.

18                  A. I don't happen to know the exact date.

19                  Q. (BY MR. PIETRKOWSKI) Do you remember  
20 what year the collection calls from Santander  
21 started?

22                  MR. LARRY: Objection, asked and  
23 answered.

1           A. I don't remember the exact year.

2           Q. (BY MR. PIETRKOWSKI) It was after 2008  
3 though; right?

4           A. I would assume so, yes.

5           MR. LARRY: Can we take a break?

6           MR. PIETRKOWSKI: Yes.

7           (Lunch recess was had.)

8           MR. PIETRKOWSKI: So we're back on the  
9 record after a lunch break.

10          Q. (BY MR. PIETRKOWSKI) The first thing I  
11 want to do is play a recording for you that  
12 we've produced to your counsel already.

13          Have you heard the recording?

14          A. I'm not sure.

15          Q. Okay. You didn't listen in preparation  
16 for the deposition?

17          A. We did listen to a call yesterday.

18          MR. LARRY: We did listen knowing what  
19 is coming today. This is one of them.

20          Q. (BY MR. PIETRKOWSKI) All right. So  
21 this is one of the recordings you listened  
22 to. I'm just going to play -- it's a really  
23 long one, so I am just going to play the

1 beginning of it and my question is going to  
2 be is that your voice on the other end.

3 It's very quiet, so I did the best I  
4 could to amplify it?

5 (Playing recording.)

6 Q. (BY MR. PIETRKOWSKI) All right. I'm  
7 going to stop it there.

8 My question is: And I know it's  
9 difficult to hear your voice, but was that  
10 your voice on the other end of the line?

11 A. Yes. I had had surgery and I could  
12 hardly talk. I had my thyroid removed.

13 Q. My understanding is that that recording  
14 is May 14, 2012.

15 A. I had a problem for a long time until  
16 my voice got right.

17 Q. When was your surgery?

18 A. The exact date?

19 Q. Just approximately.

20 A. The thyroid was 2010, cervical was  
21 2011.

22 Q. So you still had some problems talking?

23 A. It took me awhile, about two years or

1 more. It's getting better now.

2 Q. So I'm going to flip towards the end of  
3 the call, and I want you to listen to this  
4 part.

5 (Playing recording.)

6 Q. (BY MR. PIETRKOWSKI) All right. So let  
7 me stop it there again.

8 My question is after hearing that  
9 recording, do you recall having given your  
10 9678 number to Santander on that call as a  
11 current cellphone number --

12 A. Yes.

13 Q. -- and as a number that if Santander  
14 wanted to, it could contact you at?

15 A. Yes.

16 Q. And is this the type of verification  
17 where they're asking for your address and  
18 your e-mail and your cellphone, is that  
19 pretty -- what you heard on the recording  
20 here, is that typical of other verifications  
21 you did with Santander?

22 A. Yes.

23 Q. Did you ever request that the calls

1 from Santander stop?

2 A. Yes.

3 Q. Do you remember the details of any of  
4 those calls in which you told Santander to  
5 stop?

6 A. I requested speaking to a supervisor  
7 and I addressed the issue of why are you  
8 calling so many times. They would call after  
9 arrangements had already been issued -- had  
10 already been addressed. The calls were still  
11 coming, and I requested to speak to a  
12 supervisor. I can't remember what the  
13 supervisor's name was, but that's a  
14 conversation that I have had approximately --  
15 maybe two times with the supervisor there.

16 Q. When you had these conversations --  
17 well, first of all, can you remember the date  
18 of any of the conversations you were just  
19 describing?

20 A. No.

21 Q. When you had the conversation, you  
22 described it as why are you calling so many  
23 times, did you ever have a conversation where

1       you said I want you to stop calling my  
2       cellphone forever?

3           A. I just said stop calling my number. At  
4       the time, I think I only had cellphone  
5       number, I didn't have a home number.

6           Q. But the way you described it before was  
7       why are you calling so many times.

8           So here is my question: When you made  
9       that request, were you asking that all calls  
10      to your cellphone stop forever or only stop  
11      for a certain period of time?

12          A. Well, it was logical that the issue had  
13      been addressed in regards to maybe payment  
14      arrangements of what I was going to pay, but  
15      the calls were still coming after that been  
16      had done. So that was my issue and concern.

17          Q. And then after that situation was  
18      resolved, that specific situation, if you  
19      missed another car payment, did you expect  
20      the calls to resume?

21          A. Yes.

22            MR. LARRY: Objection, relevance. Go  
23      ahead.

1                   Can you repeat it? I think we were  
2 speaking over each.

3                   A. Can you repeat the question?

4                   MR. PIETRKOWSKI: Read back the  
5 question.

6                   (Requested portion read by the  
7 reporter.)

8                   MR. LARRY: Objection, relevance. Go  
9 ahead.

10                  A. Yes.

11                  Q. (BY MR. PIETRKOWSKI) Did you ask for  
12 the calls to stop to a specific phone number,  
13 if you remember?

14                  A. I don't remember.

15                  Q. Do you remember whether you were  
16 speaking with a man or a woman during these  
17 calls?

18                  A. I don't remember.

19                  Q. Do you remember how long each of those  
20 conversations lasted?

21                  A. No.

22                  Q. Do you remember if it was a call that  
23 you made to Santander or one that Santander

1 made to you that you had those conversations?

2 A. Usually calls that Santander made to  
3 me.

4 Q. But you don't recall the specifics?

5 A. No.

6 Q. Do you remember you initiating a call,  
7 making a call to Santander for the purpose of  
8 telling them to stop calling me or was it  
9 always when Santander called you?

10 A. Oh, no, I have called when they wasn't  
11 calling me to a request to speak to a  
12 supervisor because it crazy because of the  
13 number of times that they were calling that  
14 wasn't normal for any business. I called  
15 requesting to speak to a supervisor to  
16 address that even though we had set up a  
17 payment arrangement, they knew when I was  
18 going to pay and then they're calling; why  
19 are you still calling.

20 Q. While the payment arrangement was in  
21 place?

22 A. Yes.

23 Q. After the payment arrangement, if you

1           Q. That's what I understand this document  
2        is.

3           A. Okay. I don't see anything.

4           Q. So I guess just to summarize this,  
5        there is nothing you can point to in this  
6        call log that's Exhibit 14 that supports your  
7        contention that you told Santander to stop  
8        calling?

9           A. Nothing here to support it, no.

10          Q. When did the calls stop?

11          A. Let me take a look at this sheet. I  
12        don't know exactly.

13          Q. If you want to look at your  
14        interrogatory answers, you can reference  
15        those.

16          A. Yeah.

17          Q. It would be Exhibit 3.

18           If you look at Page 25 of your  
19        interrogatory answers, at the end of the  
20        list, the last call that I see is dated  
21        June 26th, 2012.

22          A. Okay.

23          Q. Does that sound right to you? Is that

1 with two different figures on it.

2 Q. (BY MR. PIETRKOWSKI) Okay. But those  
3 contracts came from Adamson Ford; right?

4 MR. LARRY: Objection, legal  
5 conclusion.

6 Q. (BY MR. PIETRKOWSKI) Did Santander do  
7 anything to mislead you regarding the actual  
8 balance owed on the vehicle note?

9 MR. LARRY: Objection, legal  
10 conclusion.

11 A. I'm not sure. I don't know.

12 Q. (BY MR. PIETRKOWSKI) Paragraph 43 on  
13 the next page says "Ms. Levins never provided  
14 Santander with permission to contact her  
15 cellphone."

16 But we just listened to that recording  
17 where you did verify your 9678 number as a  
18 good number to call; right?

19 A. Yes, to call me as a representative  
20 calling me, yes, you can call me on that  
21 number.

22 Q. Well, did you discuss limiting  
23 contacting you to representatives as opposed

1 make calls?

2 A. I have.

3 Q. Do you know if that was something that  
4 you did more than once?

5 A. I have made more than one -- yes, more  
6 than once used her phone. It's my phone and  
7 I gave her the number -- that line.

8 Q. And did you ever answer calls made to  
9 that phone?

10 A. I have..

11 Q. Did anyone ever call that number  
12 attempting to contact you aside from  
13 Santander?

14 A. It was simply a -- yes, a secondary  
15 number. If you couldn't reach me at my  
16 primary number, you would know to call me on  
17 the 6074 number.

18 Q. Moving on from that, we talked a bit  
19 earlier today about the number of calls you  
20 received. And at one point you said you  
21 thought it was a maximum of five calls that  
22 you received in a single day.

23 A. Yes.

1 nine or 10 calls, why are those nine or 10  
2 calls not reflected on your interrogatory  
3 answers for a particular day?

4 A. I have no answer for that.

5 Q. Now, you mentioned that there was a  
6 supervisor called where you told -- you said  
7 stop calling?

8 A. Yes.

9 Q. But we have already talked about those  
10 calls before and those conversations involved  
11 stop calling while you have a payment plan in  
12 place; correct?

13 A. Yes.

14 Q. And once the placement plan was done  
15 and you missed another payment, you expected  
16 to receive more calls; correct?

17 A. Or call, yes.

18 Q. And then for this last one, the  
19 June 28th, 2010 entry that you were talking  
20 about, you started cussing and you said to  
21 come and get the car. Why is it that you  
22 remembered now after your attorney asked you  
23 about that particular situation that you said

# **TAB 11**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS

2 EASTERN DIVISION

3 ARICA BONNER, et al, individually and on  
behalf of all others similarly situated,

4

Plaintiffs, Case No. 1:12-cv-9431

5 Related to Case No.

v. 1:11-cv-08987

6 Case No. 1:12-cv-4671

7 SANTANDER CONSUMER USA, INC., an  
Illinois corporation, Honorable Charles P.

8 Kocoras

Defendant.

9

\*\*\*\*\*

10 ORAL DEPOSITION OF

MARK NERIOS

11 JULY 17, 2015

VOLUME 1

12 \*\*\*\*\*

13

14

15

16 ANSWERS AND DEPOSITION OF MARK NERIOS, produced as a  
17 witness at the instance of the Plaintiff, taken in the  
18 above-styled and -numbered cause on the 17th day of July,  
19 2015, A.D., beginning at 9:05 a.m., before D. Beth  
20 Randolph, a Certified Shorthand Reporter in and for the  
21 State of Texas, at the offices of Esquire Deposition  
22 Solutions, located at 1700 Pacific Avenue, Suite 1000,  
23 Dallas, State of Texas, in accordance with the Federal  
24 Rules of Civil Procedure and the agreement hereinafter set  
25 forth.

1 Levins debt if I'm feeling adventurous. Okay. So you  
2 said these are the activity notes. How would these have  
3 been generated if you know?

4 A. Any time there's a phone call or a communication  
5 between the customer and a Santander representative, we  
6 document or summarize what happened on the account.

7 Q. Okay.

8 MR. LARRY: I'm going to go ahead and  
9 introduce another exhibit now to hopefully save us some  
10 time later. Okay. This is going to be Exhibit 3. Jim,  
11 there's a copy.

12 MR. ROLFES: Thank you.

13 (Exhibit No. 3 was marked for  
14 identification.)

15 Q. (BY MR. LARRY) There you go. Take a second and  
16 flip through there and then I'll ask you about that  
17 document. Have you seen this collection of documents  
18 before?

19 MR. ROLFES: Object to being beyond the  
20 scope of the 30(b)(6) notice.

21 Q. (BY MR. LARRY) You can go ahead and answer.  
22 A. This is the first time I'm actually looking at  
23 this.

24 Q. Okay. So I can represent to you that this is a  
25 collection of documents produced by Santander in this

1 in reverse chronological order. So go to the page that's  
2 Bates marked. Those are the numbers at the bottom.  
3 SCUSA/B 00034. And again going forward, I'm going to omit  
4 the zeros and the prefix. I'm just going to call them by  
5 page numbers. So Page 34 there.

6 If you go up I would say about a fifth  
7 of the way up the page, there is an entry on March 25th,  
8 2009 at nine o'clock with the abbreviation ICNR next to  
9 the nine o'clock. If you follow that to the right, I  
10 believe that's the first mention in here of the 6954  
11 telephone number. Are you able to tell from that entry or  
12 any of the surrounding entries what the source of that  
13 telephone number is?

14 A. The 6954 number?

15 Q. Yeah, the 6954.

16 A. I couldn't tell -- I couldn't tell from here.

17 Q. Okay. Switch back to Exhibit 3 then. And if you  
18 look to page -- if you go to Page 54. So roughly halfway  
19 through. There's a document that says applicant's credit  
20 statement at the top. And if you look at the middle, do  
21 you see there are two fields where that number has been  
22 written in, home phone number and cell phone number. Do  
23 you see those?

24 A. Yes, sir.

25 Q. Okay. Is it safe to say that is most likely the

1 source of the telephone number or the way that Santander  
2 obtained that number?

3 A. Yes, sir.

4 Q. Okay. And based on your understanding of  
5 Santander's policies and procedures, would an application  
6 like this be a common way for Santander to obtain the  
7 telephone numbers that it's going to call if a consumer  
8 fails to pay a debt?

9 A. Yes, sir.

10 Q. Okay. Do you know whether this form is a  
11 standard credit -- or is this a standardized form that  
12 Santander uses?

13 MR. ROLFES: Objection to being beyond  
14 the scope of the 30(b)(6).

15 Q. (BY MR. LARRY) You can go ahead and answer.

16 A. I can't --

17 Q. You should probably turn back to it and look.

18 A. Yeah. This page?

19 Q. 54.

20 MR. ROLFES: Also object on foundation.

21 A. I mean, I can't say that. They all look the  
22 same.

23 Q. (BY MR. LARRY) Okay. Now, is there anything --  
24 can you review the last few pages of the -- of Exhibit 2,  
25 the account notes?

1 Q. Okay. Okay. Let's move on to a different --  
2 well, actually let's keep going with that. Do you know --  
3 well, actually scratch that. Are you familiar with the  
4 number

5 A. Yes, sir.

6 Q. Okay. And how are you familiar with that number?

7 A. In reviewing the notes.

8 Q. Okay. Based on your review of the notes and any  
9 other knowledge you have, are you able to tell me how  
10 Santander obtained that telephone number?

11 A. Yes, sir.

12 Q. Okay. Please tell me.

13 A. If you look at the first time the phone number  
14 appears in the notes, looks like it's 3-27-2009.

15 Q. Okay.

16 A. You see the incoming call from

17 Q. Yeah.

18 A. Next to that it shows IVR1's home.

19 Q. Okay.

20 A. So that's when the number would have been updated  
21 at that time.

22 Q. Okay. And can you explain to me what IVR1's home  
23 means?

24 A. I can. IVR1's home is -- well, IVR stands for  
25 interactive voice response.

1 Q. Okay.

2 A. The fact that it shows home means that an  
3 associate had to designate a field for that phone number.

4 Q. Okay.

5 A. So this is the contact here so, I mean, that  
6 would have been the phone call where this phone number was  
7 updated by the customer.

8 Q. Okay. And are you able to tell from that note  
9 what the process was for actually collecting that number  
10 so -- well, actually scratch that. Do you know whether  
11 based on that account note the agent on the telephone had  
12 to ask the person on the other end for that telephone  
13 number?

14 A. Yes, sir.

15 Q. Okay. And how do you know that?

16 A. Because it's listed as IVR1 home.

17 Q. Okay. And can you just generally for me describe  
18 how that sort of conversation would take place?

19 A. On -- in this particular situation, the customer  
20 would have called prior when maybe the office was closed  
21 or something in order to have their phone number loaded as  
22 IVR.

23 Q. Okay.

24 A. So when they call in this time, it would come up  
25 as IVR1.

1 Q. Okay.

2 A. So when they're talking to the associate and when  
3 the phone number comes up, they say, hey, this number that  
4 you're calling in from, what type of phone number is this.

5 Q. Okay. So -- okay. So on IVR1 specifically just  
6 that portion of it.

7 A. Uh-huh.

8 Q. Is that an automatically generated entry that  
9 happens when an individual calls in to Santander but  
10 doesn't actually connect with somebody, with a live agent?

11 A. Yes, sir.

12 Q. Okay. Is there any other way that you know of  
13 that a number would end up with the designation IVR1  
14 regardless of what's after that?

15 A. Just that situation that you --

16 Q. Okay. Okay. So then based on that call, what's  
17 noted as Miss Levins called in after having previously  
18 called and the agent asked what type -- I see -- would  
19 they say something like I see you're calling from 6074?

20 A. Right.

21 Q. What type of telephone number is that?

22 A. What type of telephone number.

23 Q. Sure.

24 A. Is this a good number to contact you at.

25 Q. Okay. And what would the options be for that

1 part of the field? So there's home. Would cell have been  
2 an option?

3 A. Yes, sir, cell would be an option.

4 Q. Okay. What about -- what about workplace or  
5 something of that nature?

6 A. Business is in there as well.

7 Q. Business. Okay. Are there any others that  
8 you're aware of?

9 A. I believe there might be another but I'm not a  
10 hundred percent positive. I believe there is though.

11 Q. Okay. If there is another, do you know what it  
12 would be?

13 MR. ROLFES: I'm going to object to the  
14 sort of speculative nature of that question.

15 Q. (BY MR. LARRY) Sure. Well, I guess -- and I can

16 clarify that. There's sort of two things there.

17 There's -- I'm going to quote a good friend, Donald  
18 Rumsfeld here. There's an unknown unknown. You know  
19 there might be something else out there. You have no idea  
20 what it is. Or there's one that you know -- you know it  
21 could be one, and if there is another one, it's definitely  
22 that.

23 So, for instance, cousin's house. I  
24 assume that's not it, but do you know if there is, in  
25 fact, a fourth category what that fourth category is?

1 A. Ask the question one more time.

2 Q. Sure. When they're running through that process  
3 that you just described where they're asking what type of  
4 phone number it is, do they identify the phone number or  
5 do they say I see you're calling from 6074?

6 MR. ROLFES: I'll object --

7 Q. (BY MR. LARRY) Or are they -- are they saying I  
8 see you're calling from or something to that effect? Do  
9 they list the number off or do they just say this number?

10 MR. ROLFES: I'll object to the form of  
11 the question as well as being beyond the scope of the  
12 notice.

13 A. I mean, I listen to a ton of calls. Sometimes  
14 the customer will say, hey, add this number. Sometimes,  
15 you know, the agent will say this number that you're  
16 calling in from and reading --

17 Q. Okay.

18 A. You know, read the phone number to -- there's no  
19 way from looking at the notes I could tell how the  
20 conversation went.

21 Q. Okay. And then as far as the process that the  
22 agents are trained to do, they are to confirm that that is  
23 a good contact phone number?

24 A. Yes, sir.

25 Q. Okay. Can you tell me the question they're

1 trained to ask to learn whether it's a good contact  
2 number?

3 MR. ROLFES: I'll object. This is  
4 beyond the 30(b)(6) and plus this was the subject of the  
5 deposition with Mr. Nightingale four or five months ago.

6 Q. (BY MR. LARRY) You can go ahead and answer.  
7 A. Yeah, they would ask if it was a good contact  
8 number.

9 Q. Okay.

10 MR. LARRY: And just to clarify, I was  
11 asking about the training which is one of the subjects of  
12 this deposition that he's been designated at that Wayne  
13 specifically didn't know much about.

14 MR. ROLFES: Training about FDCPA?

15 MR. LARRY: Sure.

16 MR. ROLFES: Okay. So you're asking  
17 about -- about how these numbers -- what is asked about  
18 the contact information and how to get that which is the  
19 TCPA training which was --

20 MR. LARRY: It's both.

21 MR. ROLFES: -- specifically covered in  
22 Mr. Nightingale's.

23 MR. LARRY: It's both and it's how these  
24 numbers -- this number at issue were obtained so.

25 Q. (BY MR. LARRY) All right. Let's quit wasting

1 from a mutual point of understanding so we can go from  
2 there. So Santander doesn't just decide randomly which  
3 delinquent customers to call and when. Right? There's  
4 some sort of process or methodology in place. Correct?

5 A. There's strategies in place. I guess you could  
6 say there's strategies in place.

7 Q. Sure. And if my understanding is correct, the  
8 way the system works is that whatever those strategies may  
9 be, Santander comes up with -- with criteria and runs  
10 those criteria against its systems and then determines  
11 groups of telephone numbers to call or groups of accounts  
12 at least to call.

13 MR. ROLFES: I'll object to that as  
14 clearly beyond the scope of this 30(b)(6) and that was the  
15 subject of the previous 30(b)(6) deposition.

16 A. That's still -- I mean --

17 Q. (BY MR. LARRY) Okay. So let's skip over that  
18 then and get to kind of the end product. And that is once  
19 whatever that process is, once it has been determined that  
20 a call or more multiple calls will be placed regarding a  
21 specific account, can you please describe the process for  
22 determining which telephone numbers will be called?

23 MR. ROLFES: I'm going to object.  
24 That's beyond the scope of this 30(b)(6) and, I mean, we  
25 went through this with Wayne on how the numbers are

# **TAB 12**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION  
4 HENRY ESPEJO, individually )  
and on behalf of all )  
5 others similarly situated, )  
 )  
6 Plaintiff, )  
 )  
7 VS. ) Case No: 1:11-cv-08987  
 ) Honorable Charles P.  
8 SANTANDER CONSUMER USA, ) Kocoras  
INC., an Illinois )  
9 corporation, )  
 )  
10 Defendant.

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Ken Stanberry, CSR #8987



1 (Short break from 10:22 to 10:33 a.m.)

2 Q. Mr. Nightengale, can we look back at Plaintiff's  
3 Exhibit 2, again. So we are still in paragraph two.  
4 You see in the second sentence where you refer to the  
5 characteristics of the dialing system utilized by  
6 Santander, do you see that?

7 A. Yes.

8 Q. What do you mean by dialing system utilized by  
9 Santander?

10       A. The system we utilize for inbound and outbound  
11 phone calls.

12 Q. Okay. Is that both hardware and software?

13 A. Yes.

14 Q. Okay. Does it have a specific name, the dialing  
15 system?

16 A. Yes.

17 O. What is that?

## 18 A. Aspect Telephone System.

19 Q. Is there a specific version of the Aspect  
20 Telephone System that Santander uses?

21 A. I believe when we installed it, it was 6.5, but  
22 you've have minor upgrades 6.1 or 6.5 over time.

23 Q. You said when it was installed, do you recall  
24 when it was first installed?

25 A. 2006.

1 use a blend, where you can take inbound or make outbound  
2 phone calls, you can set for inbound only. Technically,  
3 you could set it for outbound only. But those are the  
4 characteristics we utilize. I know they have an online  
5 chat module we don't utilize. It's the characteristics  
6 we use of the telephone system.

7 Q. Let me ask you a different question. Have you  
8 ever heard of Aspect's blaster mode?

9 A. No.

10 Q. Have you ever heard of Aspect's predictive dialer  
11 mode?

12 A. Yes.

13 Q. Does Santander utilize that?

14 A. We utilize a common term which is predictive  
15 dialer, which we can get into the definition of, if you  
16 would like. But yes, we use a predictive dialer feature  
17 of Aspect.

18 Q. Okay. So what's your definition of predictive  
19 dialer with respect to Aspect?

20 A. Aspect has an algorithm that helps maintain  
21 efficiency on inbound and outbound phone calls.

22 Q. So that's the predictive dialer mode?

23 A. Yes.

24 Q. Utilizing that algorithm?

25 A. Yes.

1       A. I can say almost on daily basis, yes. And you'll  
2       have exclusion of holidays or anything like that.

3       Q. Okay. From 2011 earlier, how often did Santander  
4       utilize the predictive dialer mode?

5       A. I believe we used it six days a week.

6       Q. Do you know which days?

7       A. Monday through Saturday.

8       Q. 24 hours a day?

9       A. No.

10      Q. Okay. Do you know the hours of each day it was  
11     used?

12      A. Central time, it would be 7 a.m. to -- and again,  
13     it varies Monday through Thursday, to 11 p.m. central  
14     time. Friday, I believe only until 7 p.m., and Saturday  
15     7 a.m. to, I believe, 5 or 6 p.m. central.

16      Q. Okay. Does Santander maintain records of when it  
17     used each dialing mode?

18      A. Repeat that question for me.

19      Q. Does Santander maintain records of when each  
20     dialing mode was used?

21      A. Every account is documented with any and all  
22     attempts, so yes.

23      Q. Okay. So each account would show what dialing  
24     mode was used to make a particular call, is that right?

25      A. Yes, you can ascertain that information.

1           Q. But those would be the technical people at  
2           Santander, right?

3           A. Yes.

4           Q. Okay. Can you take a look at paragraph three and  
5           give that a read, and let me know when you're done.

6           A. Yes.

7           Q. Okay. You see where it says, Santander's dialing  
8           system does not store any customer information. What do  
9           you mean by "store"?

10          A. We do not keep information on the Aspect dialing  
11          system.

12          Q. Okay. And when you say customer information,  
13          what do you mean by that?

14          A. You would have everything from names, account  
15          numbers, interest rates, loan amounts, per diem, vehicle  
16          type, insurance information, anything of that nature.

17          Q. Do you see also reference account and contact  
18          information, in paragraph three?

19          A. Yes.

20          Q. Is that different than what you just described?

21          A. That's inclusive of.

22          Q. Okay. What types of contact information does  
23          Santander store?

24          A. Anytime we communicate with a customer, either a  
25          letter, either a phone call, either inbound or outbound.

1 It is documented at the account level in our host  
2 system.

3 Q. So when you say contact information, you're not  
4 referring to something like mailing address, right?

5 You're referring to times you have contacted a customer?

6 A. No, it's mailing address and everything is stored  
7 on our host system.

8 Q. I see. So the phone numbers would be stored on  
9 the host system?

10 A. Yes.

11 Q. Mailing address is stored on the host system?

12 A. Yes.

13 Q. Okay. Got it. Do you know what form the account  
14 information is stored in on the host system?

15 MR. COLMAN: Objection as to the term  
16 "form."

17 Q. You can answer?

18 A. Define that one for me.

19 Q. Okay. Sure. Is it stored in a database, is it  
20 stored in a paper file? What form is it in?

21 A. Both.

22 Q. Okay.

23 A. Like the image of a contract is stored. So  
24 that's information relevant to an account. Then other  
25 information that is contact information from a

1 standpoint of an inbound, outbound or letter is stored  
2 in a database.

3 Q. Okay.

4 A. Even the contract technically is stored in a  
5 database.

6 Q. But it's all in electronic form?

7 A. Yes.

8 Q. Okay. So if you have a paper contract, it gets  
9 scanned in and goes into the host system?

10 A. The information is, and then I can actually view  
11 the image of the individual contract as well.

12 Q. I see.

13 A. The obvious individual contracts are stored in a  
14 safe place, document storage facility.

15 Q. Do you know where that storage facility is?

16 A. Unfortunately, I do not.

17 Q. Do you know who would know?

18 A. I would reach out to -- I could actually refer to  
19 a similar -- some of our documentation is at Iron  
20 Mountain, but I can't remember the actual vendor that we  
21 utilize.

22 Q. It's a third-party vendor?

23 A. Yes, that's stores the original physical  
24 documentation from the original loan file.

25 Q. When you refer to Santander host system, excuse

1 me -- what do you mean when you say "host system"?

2 A. Our system we utilized is based upon Shaw, which  
3 a commercially available customer account management  
4 system. On top of that, we have built a graphic use  
5 interface called My Supervisor or My Sup, for short.  
6 That is what we consider our host system, which all  
7 relevant data, including contract information, address,  
8 phone number, all account notes, are stored in our host  
9 system.

10 Q. I understand. And there's just the one host  
11 system?

12 A. Correct.

13 Q. Okay. Do you know what version of Shaw Santander  
14 is utilizing?

15 A. No, I do not.

16 Q. I'm sorry. Go ahead.

17 A. Shaw is the basis of the engine which does the  
18 interest accruals, statements, things like that, but we  
19 utilize My Supervisor, which is a graphic interface on  
20 top of it. So we'll make continual changes to My  
21 Supervisor on an ongoing basis.

22 Q. Okay. Do you know whether there's been different  
23 versions over time of My Supervisor?

24 A. Yes, there has.

25 Q. Do you know whether there are any written manuals

1 specific people, but not necessarily a specific job  
2 title?

3 A. Technically, it would be a job title. Managers  
4 in the data operations group, they would handle that.

5 Q. I see, so management refers to managers, but not,  
6 for example, an executive?

7 A. No, management could be all inclusive. So I  
8 don't know whether I would consider myself an executive,  
9 but at the same time, I have direct responsibility and  
10 input on the two, exactly what we will dial on a daily  
11 basis.

12 Q. Okay. So does the management group change at  
13 all? Has it changed over time?

14 A. I've been the consistent piece of it, but yes,  
15 management has changed over time, job duties have  
16 changed over time.

17 Q. Can you recall any specific people that were part  
18 of this management group that you're referring to in  
19 paragraph four?

20 A. Joseph Burda, is currently a person.

21 Q. Anyone else?

22 A. He's got individuals, managers directly  
23 underneath him. But I don't have a name for you.

24 Q. We won't tell them that.

25 Later on in paragraph when you make the

1 statement, create a list of phone numbers, what do you  
2 mean create a list of phone numbers?

3 A. We create a list based on certain criteria that  
4 would determine if you will be placed in the outbound  
5 dialer for a potential phone call that day.

6 Q. Okay. What's the criteria?

7 A. There's a multitude of criteria.

8 Q. Does it change day-to-day?

9 A. Technically, yes, every day.

10 Q. Okay. So what criteria can you recall, as you  
11 sit here today?

12 A. Behavior scores on account. Past due, number of  
13 days past due, balances on account, there's a multitude  
14 of criteria.

15 Q. Okay. Is there a comprehensive list of criteria  
16 that would be used?

17 A. Yes.

18 Q. Okay. Do you have access to that?

19 A. Which timeframe are you referring to.

20 Q. We can stick to the relevant timeframe from your  
21 declaration?

22 A. Going back that far, I don't know if I have exact  
23 criteria being used at that time.

24 Q. Do you have a current list that's comprehensive  
25 of the criteria that's used?

1 A. Yes.

2 Q. Okay. So how were the criteria selected for any  
3 given day?

4 A. Again, it's new loans for a welcome call can be  
5 in there. You have past due balances amounts, behavior  
6 score that drives that determination. Again, the  
7 criteria fluctuates each and every day.

8 Q. So, for example, is there a specific past due  
9 amount that would then include a phone number on the  
10 list if --

11 A. There's specific days past due that are one of  
12 the key components that do it, that along with their  
13 behavior score.

14 Q. So if you're a certain number of days past due,  
15 you would be included potentially?

16 A. Correct, potentially.

17 Q. Is that comprehensive list, the current list  
18 anyway, is that in written form?

19 A. Yes.

20 Q. Okay. And you said you have access to that,  
21 right?

22 A. Correct.

23 Q. Okay. Who specifically is responsible for  
24 creating the list of phone numbers, you can do it by job  
25 title?

1           Q. Do you have records of when those changes are  
2           made?

3           A. For when?

4           Q. For the relevant time period -- timeframe, excuse  
5           me?

6           A. No, probably not.

7           Q. Do you have records since December 2011 of when  
8           those criteria would have changed?

9           A. I know I have records probably for the past year  
10           of criteria that's changed.

11           Q. Okay. So then if I understand you correctly, the  
12           cry is set, right, at some point in time by yourself?

13           A. Uh-huh.

14           Q. And then the system, using that criteria, each  
15           day, creates a list of phone numbers that are going --  
16           the host system creates the list of phone numbers and  
17           the host system loads that into the Aspect dialer?

18           A. We have an automatic dialer host team, that  
19           exported from another system, and we imported into our  
20           Aspect Telephone System.

21           Q. Can you say that first part again?

22           A. We have our dialer operations team, they -- an  
23           individual there would take a file that's generated, and  
24           then upload it into the Aspect Telephone System.

25           Q. Do you know what that individual physically does

1 to upload the file?

2 A. I know it's a raw file that's created, it's then  
3 imported. It's a format created in a format that Aspect  
4 can receive it and then they upload it into the Aspect  
5 Telephone System.

6 Q. Does that person have to literally click keys on  
7 their computer keyboard?

8 A. Yes.

9 Q. And they do that every morning?

10 A. Yes.

11 Q. Do you know what time that happens?

12 A. If everything is running on time, they usually  
13 have the file between 5 a.m. and 6 a.m. in the morning.

14 Q. Okay.

15 A. So they may do it at 6 a.m. or 6:30 a.m., but  
16 usually they ensure we are up and available by 6 a.m.

17 Q. Do you know how long it takes to upload that file  
18 to their dialer system?

19 A. No, I do not.

20 Q. Why do you do it that way as opposed to, for  
21 example, the system doing it, automatically uploading  
22 the file?

23 A. You're going to be a consultant now for us?

24 Q. No, I'm curious.

25 A. There's a link for telephony piece but a RAW file

1 essentially the first step? This process, that's what  
2 you mean by "initiate"?

3 A. You have to let the system know you're available.  
4 So I have to press a button to let the person know I'm  
5 available. Two people have to do their job in order for  
6 anything to occur.

7 Q. I understand. And right after that, when you say  
8 "human intervention," what do you mean by that?

9 A. A person physically has to push a button in order  
10 to do anything.

11 Q. Okay. And so in the context of someone who is  
12 there to receive a call, they have to push the button to  
13 log in?

14 A. You have to push the button to log in, and you  
15 have to push the button to tell the person you're  
16 available.

17 Q. And with respect to uploading the RAW file, they  
18 have to push the button to upload the RAW file?

19 A. And then they have to start the system as well.  
20 So once it's uploaded, then they have to tell the  
21 system, okay, we have people logged in and ready to make  
22 and receive phone calls.

23 Q. Okay. Can you describe physically what that  
24 person has to do to start the system?

25 A. Once the list is loaded, then they physically

1 A. Every time.

2 Q. Okay. So they enter the code, they receive one  
3 phone call. Once that's completed, they have to enter  
4 the code again?

5 A. They have to disposition that phone call, and  
6 upon disposition of that phone call, then they have to  
7 hit -- get next, which means I'm available again.

8 Q. What do you mean by "disposition" of the phone  
9 call?

10 A. You have to record the events that occurred on  
11 that phone call. Whether it was a customer service  
12 call, inquiry about a payoff, outbound collection phone  
13 call, promise to pay, left message. Any type of  
14 communication with a customer is then recorded, is what  
15 we consider a disposition of that phone call.

16 Q. How is it recorded?

17 A. In our activity notes.

18 Q. And where are the activity notes contained?

19 A. In the host system.

20 Q. So that would be through that user interface we  
21 discussed, My Sup?

22 A. Correct.

23 Q. So once an employee makes themselves available  
24 again after the disposition of one phone call, do they  
25 immediately receive or make another phone call?

1 A. There's multiple area codes for the Dallas area.

2 There's 817, there's 214.

3 Q. So that's the purpose for using the different  
4 areas codes in different offices?

5 A. Yes, all those area codes is where we had offices  
6 located.

7 Q. But what was that purpose of having different  
8 area codes?

9 MR. COLMAN: Objection. I don't believe  
10 Mr. Nightengale has been designated for the person most  
11 knowledgeable even on this issue, and irrelevant.

12 A. Yes. We have an office in every area code we  
13 pulsed out.

14 Q. (BY MR. RICHMAN) Okay. Could an office that's  
15 not in the 214 area code have the 214 area code pulsed  
16 out?

17 A. Yes.

18 Q. Okay. Does Santander maintain records of the  
19 calls that the dialing system places?

20 A. Each account is updated with any inbound or  
21 outbound calls placed, yes.

22 Q. Does Santander maintain records of the calls in  
23 any other way?

24 A. No.

25 Q. How long does Santander maintain those records

1 that.

2 A. We utilized this time frame, the master files,  
3 Accurint. I believe there was one more and the name  
4 escapes me.

5 Q. And how about since December 2011?

6 A. We've narrowed it down to predominantly  
7 Lexis-Nexis, which own Accurint, as the provider.

8 Q. Okay. Do you know whether any of the numbers in  
9 Maria Espejo's account were obtained by skip-tracing?

10 A. No, they were not.

11 Q. Okay. Was there any other way that Santander  
12 obtains phone numbers that are in its host system?

13 A. If we acquired accounts, the phone numbers that  
14 were there when we acquired the account.

15 Q. What do you mean acquired accounts?

16 A. We've done Portfolio B. She's the only person  
17 listed on the account for B, and her account was  
18 originally done by Sovereign Bank. We began to service  
19 the portfolio for Sovereign Bank.

20 Q. Does that mean that Santander bought the loan  
21 from Sovereign Bank, or is just doing the servicing for  
22 Sovereign Bank?

23 A. Technically, Bank of Santander bought Sovereign  
24 Bank and already owned Santander USA.

25 Q. So aside from entities that had the same

1       A. Account is on my list. I can pull up that  
2 account, I can choose to dial that phone number.

3       Q. Okay. How do you choose to do that? How would  
4 an agent choose to make that call? Like, physically,  
5 what's the process?

6       A. Okay. I'm sorry. Two options: You can enter  
7 the actual ten digits, or the phone number would be blue  
8 and hyper linked. They can click it and dial it if it  
9 was an active phone number.

10      Q. Okay.

11      A. If it was grayed-out they would be unable to do  
12 that.

13      Q. What would happen if the number was grayed-out  
14 but the agent entered the 10-digit number on there, on  
15 your own?

16      A. The system wouldn't allow you.

17      Q. Wouldn't allow you?

18      A. Correct.

19      Q. So we can see the difference between a manual  
20 call and dialer call where the agent -- there's an agent  
21 disposition if you go to one, two, three -- to the 14th  
22 row on the first page?

23      A. Yes.

24      Q. There it says in the activity note, dialer call  
25 outgoing. So does that signify the dialer made the call